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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 United States of America,

10 Plaintiff,

11 v.

12 Christopher Franklin Rogers,

13 Defendant.  
14

No. CR-13-00357-001-TUC-RCC (DTF)

**ORDER**

15 Pending before the court is Christopher Franklin Rogers' Motion for Sentence  
16 Reduction Pursuant to 18 U.S.C. § 3582(c)(1)(A). (Doc. 79.)<sup>1</sup> The Court will grant the  
17 motion.

18 **I. FACTUAL AND PROCEDURAL HISTORY**

19 Rogers pled guilty to possession with intent to distribute marijuana and on  
20 September 3, 2013, the Court sentenced to 36 months' incarceration with 3 years'  
21 supervised release to follow. (Doc. 29.) On July 8, 2016, the United States Probation Office  
22 ("USPO") filed a petition to revoke supervised release. (Doc. 32.) Rogers admitted to  
23 violating the terms of his release (Doc. 41), and on November 15, 2016, the Court  
24 sentenced him to 10 months' incarceration with 24 months' supervised release. (Doc. 46.)  
25 Then on November 14, 2017, the USPO filed a second petition to revoke (Doc. 47), and  
26

27 <sup>1</sup> Also pending is Rogers' previously submitted a letter that the Clerk of Court construed  
28 as a motion for sentence reduction. (Doc. 55.) However, "[a]n amended motion supersedes  
an original motion" and "after amendment, the Court [treats] an original motion as  
nonexistent." See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The Court will  
therefore deny the pro se motion as moot.

1 then a superseding petition on July 31, 2018 (Doc. 49). An arrest warrant was executed on  
 2 April 9, 2020 (Doc. 54, 58) while Rogers was being held in the Eastern District of Kentucky  
 3 on three other charges for trafficking in controlled substances, and possession of marijuana  
 4 and paraphernalia. (Doc. 56 at 4.)

5 Rogers' sentence in Kentucky was commuted April 6, 2020 based on similar  
 6 grounds requested here. (Doc. 71 at 1; Doc. 79-2 at 2-3.) Rogers was then detained in this  
 7 matter (Minute Entry, July 22, 2020), admitted to violating his terms of release (Doc. 65),  
 8 and was sentenced to an additional 11 months of incarceration with 12 months of  
 9 supervised release. (Doc. 74.) The Government states his projected release date is in March  
 10 2021. (Doc. 87 at 1.) Rogers asks this Court to grant him early release because his health  
 11 issues place him at a higher risk for serious complications from Covid-19. (Doc. 79.)

## 12 **II. STANDARD OF REVIEW**

13 Rogers' motion is brought under the compassionate release statute, 18 U.S.C. §  
 14 3582(c)(1)(A) as amended by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat.  
 15 5194. The statute allows the court to modify a sentence "upon motion of the Director of  
 16 the Bureau of Prisons," or upon a defendant's motion after he or she has exhausted all  
 17 administrative remedies. 18 U.S.C. § 3582(c)(1)(A). The U.S. Sentencing Commission  
 18 explains:

19 [T]he court may reduce a term of imprisonment (and may impose a term of  
 20 supervised release with or without conditions that does not exceed the  
 21 unserved portion of the original term of imprisonment) if, after considering  
 22 the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are  
 applicable, the court determines that—

23 (1) (A) extraordinary and compelling reasons warrant the reduction; or

24 (B) the defendant (i) is at least 70 years old; and (ii) has served at least  
 25 30 years in prison pursuant to a sentence imposed under 18 U.S.C. §  
 26 3559(c) for the offense or offenses for which the defendant is  
 imprisoned;

27 (2) the defendant is not a danger to the safety of any other person or to the  
 28 community, as provided in 18 U.S.C. § 3142(g); and

1 (3) the reduction is consistent with this policy statement.

2 U.S.S.G. 1B1.13 (2018). However, even if a defendant is eligible, a court has discretion to  
3 deny compassionate release. *See United States v. Chambliss*, 948 F.3d 691, 693-94 (5th  
4 Cir. 2020); *United States v. Mangarella*, No. 06-CR-151, 2020 WL 1291835, at \*2-\*3  
5 (W.D.N.C. Mar. 16, 2020).

### 6 **III. ADMINISTRATIVE EXHAUSTION**

7 As a threshold matter, a court may only reduce a term of imprisonment upon a  
8 motion for compassionate release by the defendant if he first exhausts his administrative  
9 remedies or at least thirty days lapse from the date the defendant requests that the warden  
10 file such a motion on his behalf. 18 U.S.C. § 3582(c)(1)(A). Rogers alleges – and the  
11 Government does not rebut – that he has exhausted his administrative remedies. (*See* Doc.  
12 87 at 8.) The Court will therefore review the merits of the motion.

### 13 **IV. § 3553(A) FACTORS**

14 After deciding exhaustion, courts must consider the factors outlined in 18 U.S.C. §  
15 3553(a). 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. 1B1.13. These factors include “the nature  
16 and circumstances of the offense and the history and characteristics of the defendant; the  
17 purposes of sentencing; the kinds of sentences available; the sentences and ranges  
18 established by the Sentencing Guidelines; relevant policy statements issued by the  
19 Sentencing Commission; the need to avoid unwarranted sentencing disparities among  
20 similarly situated defendants; and the need to provide restitution to victims.” *United States*  
21 *v. Trujillo*, 713 F.3d 1003, 1008 (9th Cir. 2013).

22 The Government claims that the § 3553(a) factors weigh against release but  
23 provides scant argument, merely stating the Court should consider where Rogers would be  
24 safer; incarcerated or in a Residential Re-entry center. (Doc. 87 at 15.) Rogers has provided  
25 a response by the United States District Court Probation Office indicating that a Residential  
26 Re-entry program was the most viable option. (Doc. 79-1.) He also states that he will be  
27 eligible for ACCCHS upon release and he can hold down a job. (Doc. 79 at 7.)

28 The Court finds that given the commutation in Kentucky and the limited time

1 remaining on Rogers' revocation sentence, the § 3553 factors weigh in his favor.  
 2 Furthermore, the Court cannot find that participating in a Residential Re-entry program  
 3 would be more dangerous to Rogers' health and those around him than incarceration.

#### 4 **V. EXTRAORDINARY AND COMPELLING REASONS FOR RELEASE**

5 A court's reduction of a sentence under the compassionate release statute is  
 6 extraordinary and reserved for "compelling circumstances which could not reasonably  
 7 have been foreseen by the court at the time of sentencing." *See* 28 C.F.R. § 571.60 (2000).  
 8 Although not foreseen, the "mere existence" of Covid-19 is not enough alone to justify  
 9 compassionate release. *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020); *see also*  
 10 *United States v. Roeder*, 807 F. App'x 157, 160–61 (3d Cir. 2020) ("[T]he existence of a  
 11 widespread health risk is not, without more, a sufficient reason for every individual subject  
 12 to a properly imposed federal sentence of imprisonment to avoid or substantially delay  
 13 reporting for that sentence."). Moreover, reducing a sentence because of medical issues is  
 14 "a rare event." *United States v. Johns*, No. CR 91-392-TUC-CKJ, 2019 WL 2646663, at  
 15 \*2 (D. Ariz. June 27, 2019) (quoting *White v. United States*, 378 F. Supp. 3d 784, 786  
 16 (W.D. Mo. 2019)).

17 The U.S. Sentencing Commission explains that "extraordinary and compelling"  
 18 reasons may exist if the defendant is suffering from a terminal illness or from a serious  
 19 physical or medical condition that "substantially diminishes the ability of the defendant to  
 20 provide self-care within the environment of the correctional facility and from which he or  
 21 she is not expected to recover." U.S.S.G. § 1B1.13, cmt. 1(A). Alternatively,  
 22 "extraordinary and compelling" reasons may exist if the defendant is at least 65 years old,  
 23 experiences "serious deterioration in physical or mental health" caused by the aging  
 24 process and has served at least 10 years or 75% of his sentence. U.S.S.G. § 1B1.13, cmt.  
 25 1(B). Moreover, there is a catchall provision allowing an extraordinary or compelling  
 26 reason other than, or in combination with, the reasons" stated above, as defined by the  
 27 Bureau of Prisons. U.S.S.G. § 1B1.13 cmt. 1(D).

28 Defendant claims that his cardiomegaly (enlarged heart), hypertension, high

1 cholesterol, COPD, asthma, and obesity are extraordinary and compelling reasons which,  
2 combined with the Covid-19 pandemic, warrant early release. (Doc. 79 at 3.) He alleges  
3 the Bureau of Prisons has been unable to control his hypertension with medication. (Doc.  
4 79 at 5; *see* Doc. 83 at 6 (blood pressure (“bp”) 147/88 on Aug. 20, 2020); *id.* at 11 (bp  
5 156/97 on Apr. 9, 2020); *id.* at 14 (bp 174/88 on Dec. 5, 2019.) He suffers from chest pain  
6 and breathing difficulties.

7 The Government asserts that Rogers’ obesity does not present an extraordinary or  
8 compelling reason warranting release. (Doc. 87 at 12-15.) The Government appears to  
9 argue that although Rogers’ BMI is over 30, it is self-inflicted because CCA placed him on  
10 a specialized “diet for health” which he refused. (Doc. 87 at 13; Doc. 83 at 5 (July 8, 2020  
11 assessment: “He states the food is ‘mush’ when he gets it and prefers regular food[.]  
12 Requesting to stop diet.” (Doc. 83 at 9 (on regular diet May 21, 2020))). In general, Rogers’  
13 obesity does not undermine his contention that his weight presents an extraordinary or  
14 compelling reason for release because inmates typically cannot control what foods they are  
15 given. However, in Roger’s circumstance, he has been provided a diet that could help with  
16 weight loss and declined.

17 Regardless of his lifestyle choices, “what matters is that Defendant’s medical  
18 condition places him on the CDC’s list of people at increased risk of severe illness from  
19 COVID-19—a list which courts around the country have used as a guidepost for  
20 determining whether extraordinary and compelling reasons exist in COVID-19  
21 compassionate release cases.” *United States v. Henderson*, No. 15-0329 (ES), 2020 WL  
22 5055081, at \*4 (D.N.J. Aug. 26, 2020) (citing *United States v. Dent*, No. 18-20483, 2020  
23 WL 4783921, at \*3 (E.D. Mich. Aug. 17, 2020)). According to the Center for Disease  
24 Control, hypertension, COPD, asthma, and obesity are four factors that may increase a  
25 person’s risk for developing severe complications from Covid-19. *See*  
26 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html>  
27 (strong evidence of increased risk of severe illness from Covid-19 for COPD and obesity,  
28 mixed evidence of increased risk for asthma and hypertension) (last visited Nov. 9, 2020).

1           The Court finds that Rogers' hypertension and obesity are serious physical  
2 conditions for which he is unlikely to recover and in conjunction with the Covid-19  
3 pandemic qualify as "extraordinary" and "compelling" circumstances that could not have  
4 been foreseen at the time of sentencing.

5       **VI. DANGER TO THE COMMUNITY**

6           A defendant bears the burden of demonstrating that he poses no danger to the  
7 community upon release. *See* USSG § 1B1.13; 18 U.S.C. § 3142(g). Rogers is not a violent  
8 offender and does not pose a danger to the community.

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10          Accordingly,

11          IT IS ORDERED Christopher Franklin Rogers' Motion for Sentence Reduction  
12 Pursuant to 18 U.S.C. § 3582(c)(1)(A) is GRANTED. (Doc. 79.)

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14          IT IS FURTHER ORDERED Rogers' pro se Motion for Sentence Reduction is  
15 DENIED as moot. (Doc. 55.)

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17          IT IS FURTHER ORDERED pursuant to 18 U.S.C. § 3582(c)(1)(A), that Roger's  
18 sentence of 11 months' incarceration for revocation of supervised release (Doc. 74) is  
19 reduced to time served effective the date of this Order.

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21          IT IS FURTHER ORDERED that before being released from the custody of the  
22 Federal Bureau of Prisons (BOP), the defendant shall submit to a 7-day quarantine, which  
23 may include sequestration in the Special Housing Unit. After the 7-day quarantine, the  
24 defendant shall submit to a health screening by BOP and, if the defendant is found to be  
25 exhibiting symptoms consistent with COVID-19 or he is confirmed to have COVID-19,  
26 the defendant shall not be released to the public absent further order of the Court.

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1 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3582(c)(1)(A), which states  
2 the Court may “impose a term of . . . supervised release with or without conditions that  
3 does not exceed the unserved portion of the original term of imprisonment,” that Roger’s  
4 sentence of imprisonment shall be followed by a term of 12 months’ supervised release,  
5 and with the following conditions:

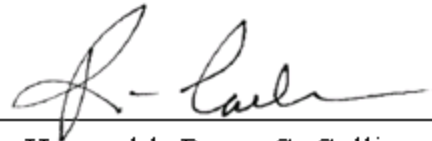
6 a. The terms of such supervised release shall be the same as the terms of  
7 supervised release specified in the August 12, 2020 judgment and commitment order (Doc.  
8 74), with certain exceptions.

9 1. During the period of supervised release, the defendant shall comply  
10 with national, state, and local public-health orders regarding Covid-19.

11 2. Upon release Rogers’ shall participate in a Residential Re-entry  
12 program.

13 3. Rogers must report to the probation office within 72 hours of release.  
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15 Dated this 30th day of November, 2020.  
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20 Honorable Raner C. Collins  
21 Senior United States District Judge  
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